LAMBANG KELANA SDN BHD
v. TENAGA NASIONAL BHD & ORS

COURT OF APPEAL, PUTRAJAYA
LEE SWEE SENG FCJ
AZIMAH OMAR JCA
WONG KIAN KHEONG JCA
[CIVIL APPEAL NO: N-01(A)-491-07-2022]
16 MAY 2025
[2025] CLJ (JT6)

Abstract – *In interpreting the provisions governing the wayleave procedures under the Electricity Supply Act 1990, the purposive approach ought to be preferred. This is because a strict and literal interpretation of the provisions will bring about an absurd and unjust result. Regards must also be had to the legislative intent of Parliament in promulgating the said provisions. Considering that the provisions are largely concerned with the constitutional rights of land ownership, the interpretation must also be in tandem with art. 13(2) of the Federal Constitution.*

CIVIL PROCEDURE: *Appeal – Judgment – Appeal against judgment of High Court – High Court allowed licensee of Electricity Supply Act 1990's application for judicial review to quash decision of State Authority – State Authority awarded late payment charges/interest to landowner of land due to licensee's encroachment upon land – Whether High Court fell into illegality and irrationality in arriving at decision – Whether High Court correct in its appreciation, interpretation and application of ss. 11 and 16(2) of Electricity Supply Act 1990 – Whether High Court correctly appreciated issues of attribution of delay and landowner's ultimate entitlement to late payment charges/interest*

STATUTORY INTERPRETATION: *Construction of statutes – Interpretation – Electricity Supply Act 1990, ss. 11 & 16(2) – Whether payment of compensation should include late payment charges/interest – Whether ought to be afforded purposive approach or strict literal interpretation – Whether promoted legislative intent – Whether ought to be interpreted in tandem with art. 13(2) of Federal Constitution*

The appellant was a registered proprietor of a land ('land'), while the first respondent ('respondent') was a licensee under the Electricity Supply Act 1990 ('ESA') licensed to provide and supply electricity. *Circa* 2007, for the purpose of installing or erecting any infrastructures relating to the supply of electricity, the respondent had prematurely entered into the land, without first complying with the wayleave procedures. According to the appellant,

it had neither been served with a statutory notice nor been paid any compensation for the portion of the land acquired as wayleave by the respondent. The respondent, upon realising that its transmission lines had prematurely encroached onto the land, issued a belated statutory notice under s. 11(2) of the ESA to the appellant. The appellant, however, recorded its objection against the said notice. Enquiries were thereafter held between the parties, but no proper amount of compensation was agreed to. As the parties were at loggerheads, the respondent remained to have not validly obtained a wayleave despite its continuous entry onto the land. As a result, from 2008 until 2015, various litigations at various court levels were commenced by the appellant, against the respondent on allegations of trespass and unlawful entry. After the conclusion of the litigation at the Federal Court, the appellant was forced to succumb to the acquisition. Subsequently, the appellant began to issue written reminders to the Land Administrator ('LA') to timeously hold the statutory enquiry under s. 11 of the ESA to determine the just and appropriate sum of compensation. However, after a period of three years and issuance of seven reminders, the LA still failed to conduct any statutory enquiry. Left with no other recourse, the appellant filed an originating summons to compel the LA to perform its statutory duty to conduct the statutory enquiry. Only after being pushed with a litigation that the LA fixed a date for the holding of the statutory enquiry. The appellant was thereafter awarded the sum of RM2,105,335 ('LA's decision'). As the awarded sum was not inclusive of any late payment charges/interest, the appellant filed an appeal against the LA's decision to the State Authority ('SA'), pursuant to s. 16(2) of the ESA. Only after an initial sum was paid by the respondent that the SA meted out its decision that the appellant was also entitled to be paid late payment charges/interest between the years 2007 and 2020 for the total sum of RM1,369,332.95 ('SA's decision'). Dissatisfied, the appellant filed an appeal against the SA's decision. Meanwhile, the respondent filed an application to the High Court for judicial review to quash the SA's decision. The High Court, in allowing the respondent's application, held that: (i) the SA's decision to allow late payment charges/interest was *ultra vires* s. 16(2) of the ESA as the provision precludes (by omission) the award of any other remedy aside from 'compensation'; and (ii) even if the SA was clothed with the necessary authority to award late payment charges/interest, the delay could not be attributed to the respondent as the latter was 'unable' to timeously remit the compensation until and unless the LA performed its statutory duty to hold the statutory enquiry ('High Court's decision'). Aggrieved, the appellant filed the present appeal against the decision of the High Court. The issues that arose were: (i) whether the High Court Judge ('HCJ') was correct in his appreciation, interpretation and application of ss. 11 and 16(2) of the ESA; and (ii) whether the HCJ was correct in his appreciation between the issue of the attribution of delay and the appellant's ultimate entitlement to late payment charges/interest.

Held (allowing appeal)
Per Azimah Omar JCA delivering the judgment of the court:

(1a) This court agreed with a more holistic, pragmatic and purposive interpretation of the ESA in terms of awarding late payment charges/interest so as to award 'full compensation' under ss. 11(1) and 16(1) of the ESA. A cursory appreciation of the provisions governing the rights (of both a licensee (respondent) and a landowner) and the procedure of obtaining a wayleave would sufficiently reveal that the legislative purpose of these provisions must necessarily be governed to justly protect (and balance) the authority of a licensee to enter into lands (for purposes of supplying electricity) and the rights of landowners to be fully informed and compensated for the loss of their land that had to be acquired or surrendered for the purposes of the respondent's installation of infrastructures to supply electricity to the public at large. (paras 32 & 35)

(1b) A just and appropriate compensation was at the forefront of the purpose of these provisions. It would certainly be contrary to the legislative intent if these provisions were interpreted in a manner which would encourage delays with impunity and allowing the rights and entitlement of landowners to be held in limbo and mercy of the licensee and the LA with zero repercussions. An interpretation that would allow the respondent to unjustly benefit by holding onto monies that should have been timeously paid to landowners, courtesy of the delays of the LA, would truly be absurd and unjust. Due to these considerations, the High Court's decision unfortunately ran afoul to the proper purposive interpretation of the provisions. The HCJ's error had encroached onto the realm of 'illegality' (in misinterpreting the law) and 'irrationality', thus warranting the court to intervene by overturning the High Court's decision. (paras 35-38)

(2) Since the provisions governing the wayleave procedures were largely concerned with the constitutional rights of land ownership (property), it would only be appropriate for the provisions to be interpreted in tandem with art. 13 of the FC. Therefore, the literal term of 'full compensation' under s. 11(1) of the ESA must necessarily be read together with the term 'adequate compensation' under art. 13(2) of the FC. The HCJ was already in error when he 'limited' the interpretation of the provisions without due consideration of the fundamental rights entrenched in the FC. Due to the misconstrued 'statutory limitation', despite being appreciative of the 'injustice' of depriving the appellant of its rightful entitlement to late payment charges/interest, such had not been awarded by the HCJ. On this score, the High Court's decision fell into illegality and irrationality. The first issue was answered in the negative. (paras 40 & 42-44)

(3) The respondent could not eschew away from the irrefutable fact that it had not suffered any losses (and in fact had been unjustly enriched) due to the LA's delay. Crying foul over the LA's delay did not at all nullify the fact that the respondent had been unjustly enriched at the expense of the appellant. Sentiment must be sent to the LA that it must act with due expedition in conducting the statutory enquiry lest it inevitably would lead to the unjust enrichment of the respondent and losses against landowners such as the appellant. Furthermore, there was no evidence of the respondent's timeous expedition to push the LA to perform its statutory duty under the ESA. It was the appellant's litigation against the LA and written reminders that had 'incentivised' the LA to act. To say that the respondent was entirely innocent of the delay was not entirely true as the respondent had merely coasted along with the LA's years of delay with no due urgency on the respondent's part. Equally, the respondent also had the opportunity to also push the LA to act, but ultimately failed or plainly refused to do so. In view of these deliberations, the second issue was answered in the negative. The HCJ had unfortunately fallen into error and ultimately fell into illegality and irrationality due to his erroneous analysis on this issue. Appellate intervention was therefore warranted, and the High Court's decision was quashed. (paras 49-51)

Case(s) referred to:

Bungsar Hill Holdings Sdn Bhd v. Damansara Realty Bhd [2019] 4 CLJ 429 FC ***(dist)***

Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal [2014] 9 CLJ 15 CA ***(refd)***

Mohd Azman Yaacob v. Tenaga Nasional Bhd [2025] 5 CLJ 531 CA ***(refd)***

Northman v. Barnet Council [1978] 1 WLR 221 ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

United Hokkien Cemetries, Penang v. The Board, Majlis Perbandaran Pulau Pinang [1979] CLJU 122; [1979] 1 LNS 122 FC ***(refd)***

Legislation referred to:

Electricity Supply Act 1990, ss. 11(1), (2), 16(1), (2), Third Schedule
Federal Constitution, art. 13(2)
Land Acquisition Act 1960, ss. 32, 48

For the appellant - Yeoh Cho Kheong & Subbiah Thevarayan; M/s Ranjit Singh & Yeoh
For the 1st respondent - David Dinesh Mathew, David Ng Yew Kiat & Chong Jen Hui; M/s Steven Thiru & Sudhar Partnership
For the 2nd to 5th respondents - Ala'uddin Baharom; State Legal Advisor, Negeri Sembilan

[Editor's note: Appeal from High Court, Seremban; Judicial Review No: NA-25-7-06-2021 (overruled).]

Reported by Syamim Ariffin

JUDGMENT

Azimah Omar JCA:

Introduction

[1] This is an appeal against the learned High Court Judge's ("learned judge") decision to allow the respondent's application for judicial review to quash the decision of Negeri Sembilan's EXCO (Majlis Mesyuarat Kerajaan Negeri) ("EXCO") and/or the Negeri Sembilan State Government's (collectively the "State Authority") decision to impose late payment charges/interests against the respondent ("TNB/respondent") for delayed remittance of compensation for the obtainment of wayleave across the appellant's (Lambang Kelana Sdn Bhd) ("the appellant") land pursuant to the wayleave procedures prescribed under the Electricity Supply Act 1990 ("ESA 1990").

[2] This appeal came up before us on 17 October 2024 and having heard the submissions of counsel for the appellant and learned Senior Federal Counsel appearing for the respondent, we allowed the appeal with costs. We now give our reasons.

[3] The learned judge had allowed the respondents' application for judicial review primarily on the following basis:

(i) the ESA 1990 provisions do not explicitly prescribe any other forms of remedy (aside from a "full compensation" under s. 11 of the ESA 1990) and

(ii) that any delay (if any) was not attributable to TNB.

[4] On the contrary, the appellant's primary contentions were that:

(i) a purposive interpretation of the words "full compensation" under s. 11 of the ESA 1990 should necessarily and justifiably be wide enough to include awards for interests (in case of delayed remittance) for depriving the appellant from the use of the monies (and that Parliament would never legislate in vain);

(ii) the ESA 1990 must be interpreted in a manner that is consistent with the fundamental rights entrenched within the Federal Constitution ("FC") (particularly the right to adequate compensation under art. 13(2) of the FC for the loss or acquisition of the appellant's land); and

(iii) despite the delay caused by the Land Administrator, TNB was still unjustly enriched as they were able to utilise and earn on the monies that were supposed to be paid to the appellant for the entire duration of the delay.

[5] It is pertinent to note that the *factum* of delay in the payment of the compensation was largely admitted or at least irrefutable. The remainder contentions surrounding the delay was either the existence or non-existence of 'statutory authority or discretion' to award of late payment interest, or the attribution of the delay against TNB.

Factual Background

[6] The appellant is the registered proprietor of some 100 acres land held under Pajakan Negeri No Hakmilik 23243, Lot 12177, Mukim Seremban, Daerah Seremban, Negeri Sembilan ("subject land/appellant's land").

[7] TNB of course is a licensee under the ESA 1990 licensed to undertake projects and works in providing and supplying electricity (which also includes conditional authority to enter into lands in view of installing or erecting infrastructures and installations for the purpose of supplying electricity specifically governed by s. 11 of the ESA 1990).

[8] *Circa* 2007, to the appellant's dismay, TNB had prematurely entered into the subject land without due compliance with the wayleave procedures under s. 11 of the ESA 1990. Succinctly, before TNB can enter onto any land for the purposes of erecting or installing infrastructures for the supply of electricity, TNB mandatorily must comply with the wayleave procedures under this provision.

[9] The wayleave procedures were very recently restated by the Court of Appeal in *Mohd Azman Yaacob v. Tenaga Nasional Bhd* [2025] 5 CLJ 531; [2025] 2 MLJ 414:

> Based on the above provisions, the wayleave procedure under s. 53 of the Electricity Act 1949 should entail the following:
>
> (i) LLN/TNB to identify the lands affected or involved in the project;
>
> (ii) LLN/TNB to write to the state authority for permission, and to inform the state authority of the lots involved or affected in the project;
>
> (iii) the State Authority (being the authority with all the material information and records as to land proprietorship and the authority to "inquire into any objections") shall then issue out the statutory notices in the Form prescribed under the fourth Schedule of the Electricity Act 1949 ("statutory notice") to all land owners affected by the project;
>
> (iv) landowners who were served the statutory notice may lodge an objection against the wayleave within 14 days from the service of the statutory notice; and

(v) if there were no objections by the landowners, then LLN/TNB shall be deemed to have obtained the appropriate wayleave to enter into the land and erect the necessary apparatuses for the supply of electricity.

[10] The appellant was neither served the statutory notice nor was paid any proper compensation for its loss of the portion of the subject land acquired as wayleave for TNB. Thus, on 13 April 2007, a meeting between the appellant and TNB was held to discuss TNB's clear trespass onto the subject land (due to the clear non-compliance of the wayleave procedures).

[11] In further protecting its rights as registered proprietor, the appellant proceeded to issue a letter of demand against TNB on 11 June 2007. In TNB's admission of its wrongful and premature entry onto the subject land, TNB belatedly issued the statutory notice under s. 11(2) of the ESA 1990 to the appellant on 10 July 2007 upon realising that TNB's transmission lines had prematurely encroached across 2.602 hectares of the subject land.

[12] Considering TNB's belated notice and premature entry (trespass) onto the subject land, the appellant must necessarily record its objection against TNB's statutory notice (and had recorded its objection on 6 August 2007).

[13] A series of enquiries had ensued (between August 2007 and March 2008) but to no avail as the parties were unable to come into an agreement as to the proper amount of compensation to be paid for the acquisition of a portion of the appellant's land.

[14] Since both parties were at loggerheads, TNB remained to have not validly obtained a wayleave despite continuing its entry onto the subject land. Thus, between 3 April 2008 and 12 January 2015, the parties were engaged in a litigation spanning all the way from the High Court to the Federal Court in which the appellant mounted allegation of trespass and objection against TNB's improper entry and wayleave onto the appellant's land. At the conclusion of litigation at the Federal Court level, the appellant eventually was left with no other options but to succumb to the acquisition.

[15] Thus, as early as 12 October 2015, the appellant had begun to issue written reminders against the Land Administrator to timeously hold the statutory enquiry under s. 11 of the ESA 1990 to determine the just and appropriate sum to compensate the appellant for the loss of a portion of the appellant's land.

[16] A total of seven reminders were issued from the period of 12 October 2015 until 17 December 2018 (three whole years) and the Land Administrator still failed to conduct the statutory inquiry under the provision. Undoubtedly, at this juncture, the appellant had already been

deprived of its rightful compensation for three years (while TNB had been allowed to hold onto and utilise the compensation monies for the same period of time).

[17] Left with no other recourse, the appellant was forced to commence an originating summons on 22 April 2019 against the Land Administrator to compel the Land Administrator to perform its statutory duty to conduct the enquiry under the ESA 1990. Only after being pushed by litigation did the Land Administrator enter into a consent order to fix a date to conduct the enquiry. The enquiry thus was conducted on 5 September 2019.

[18] Only on 17 July 2020 did the Land Administrator issue an award under the notice in the Third Schedule of the ESA 1990 ("assessment notice") to the appellant for the sum of RM2,105,335 (without any late payment interest) ("initial sum").

[19] As the assessment notice did not account for the clear delays and years of deprivation of monies, the appellant timeously appealed against the assessment notice before the State Authority on 28 July 2020 under s. 16(2) of the ESA 1990.

[20] Before the State Authority was able to decide on the appellant's appeal, TNB proceeded to pay the initial sum to the appellant on 18 December 2020. Only after the payment of the initial sum did the State Authority mete out its decision that the appellant was entitled to (and TNB was responsible to pay) late payment interest between the years 2007 and 2020 (13 years) for the total sum of RM1,369,332.95 ("State Authority's decision").

[21] Dissatisfied with the State Authority's decision, TNB proceeded to file an application for leave for judicial review before the High Court. Leave was allowed and upon hearing TNB's application proper, the learned judge had allowed TNB's judicial review application on 22 June 2022.

[22] Aggrieved by the learned judge's decision, the appellant filed the present appeal before us on 7 July 2022.

The High Court's Decision

[23] Upon close scrutiny of the learned judge's grounds of judgment, we identified that the learned judge's decision was premised on two primary findings:

(i) that the State Authority's award for late payment charges/interest was *ultra vires* s. 16(2) of the ESA 1990 as the provision precludes (by omission) the award of any other remedy aside from 'compensation' as the provision had 'limited' the scope of remedy to only 'compensation'; and

(ii) even if the State Authority was clothed with the necessary authority to award late payment charges, there were no delays that were attributable to TNB and that TNB was 'unable' to timeously remit the compensation until and unless the Land Administrator performs its statutory duty to hold the requisite enquiry under s. 11 of the ESA 1990.

The Appeal Before Us

[24] We have perused the memorandum of appeal, the High Court's grounds of judgment, the records of appeal and the parties' respective written submissions and we are of the considered view that the appeal before us can be determined by determining the following two issues:

(i) issue 1: whether the learned judge was correct in his appreciation, interpretation, and application of ss. 11 and 16(2) of the ESA 1990; and

(ii) issue 2: whether the learned judge was correct in his appreciation between the issue of attribution of delay and the appellant's ultimate entitlement for late payment charges or interest.

Issue 1: Whether The Learned Judge Was Correct In His Appreciation, Interpretation, And Application Of Section 11 And Section 16(2) Of The ESA 1990

[25] By and large, the learned judge's interpretation of ss. 11 and 16(2) of the ESA 1990 was a strict and literal interpretation of the provisions. However, we are pressed to find that even within the sphere of a literal interpretation, the learned judge had unfortunately misinterpreted the Federal Court's true *ratio decidendi* in the case of *Bungsar Hill Holdings Sdn Bhd v. Damansara Realty Bhd* [2019] 4 CLJ 429; [2019] MLJU 222 ("*Bungsar Hill*").

[26] The learned judge mistakenly understood that the Federal Court in *Bungsar Hill* had found that in the realm of Land Acquisition under the Land Acquisition Act 1960, the court was not clothed with the statutory authority to award 'interest' when the statutory provision had prescribed a 'specific' remedy only for compensation (while omitting or not mentioning other forms of remedies alike late payment interest).

[27] Succinctly, the learned judge's mistaken understanding of the Federal Court's decision in *Bungsar Hill* was that the 'omission' of other forms of remedies (aside from compensation for acquisition) would effectively preclude those other omitted remedies:

> 34. In the case of *Bungsar Hill Holdings v. Damansara Realty* [2019] 4 CLJ 429, the parties were in a dispute on the entitlement to compensation payment for a compulsory acquisition pursuant to the Land Acquisition Act 1960. Pending the resolution of the dispute, the Land Administrator in that case paid the compensation sum into court. The entitlement to the

compensation sum was eventually resolved in favour of Bungsar Hill, following which it applied for the release of the compensation sum. It also claimed interest against Damansara Realty, on the basis that Bungsar Hill had been deprived of earlier use of the compensation sum by reason of the act by Damansara Realty in disputing its entitlement to the compensation sum. *There is, of course, no provision in the Land Acquisition Act 1960 that entitles interest to be claimed from a person who disputes the right of another person to receive compensation following a compulsory acquisition.*

35. *The Federal Court found that Bungsar Hill was not entitled to claim interest on the compensation sum* from Damansara Realty, holding as follows:

> [29] One acceptable principle of interpretation of a statute is that, when a statute provides for a specific remedy, *it necessarily excludes any other remedy not provided for by that statute*. The House of Lords' decision in *Pasmore v. The Oswaldtwistle Urban District Council* [1898] AC 387 had often be referred to on this legal position. In the speech of the Earl of Halsbury LC he said:
>
> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.
>
> (emphasis added)

[28] Unfortunately, the learned judge had not gone beyond these short excerpts above to truly understand the actual context of the Federal Court's decision in *Bungsar Hill*. It was not at all the intention of the Federal Court to preclude the award of interest for late payment beyond the payment of a compensation in the realm of a land acquisition. It was NOT the Federal Court's intention to entirely preclude the award for late payment interest when the Land Acquisition Act 1960 supposedly only provides for the payment of 'compensation'. INSTEAD, the true context of the decision in *Bungsar Hill* was the competing or duality of late payment charges/interests under the regime of the Land Acquisition Act 1960 and the regime of judgment interest under the Civil Law Act 1956.

[29] What the Federal Court truly meant to decide was that since the award for late payment charges/interest (in the realm of land acquisition) was already specifically and sufficiently governed by ss. 32 and s. 48 of the Land Acquisition Act 1960, thus the court ought to be precluded from awarding further judgment interest upon the late payment charges/interest already awarded under the regime of the Land Acquisition Act 1960. This was vividly clear from the following excerpts of the Federal Court's decision in *Bungsar Hill*:

> [25] We agree with the respondent that LAA is a special and specific law to regulate the compulsory acquisition of land. *Under the LAA the clauses on payment of compensation are clearly articulated in ss. 29A(5), 32(1) and (1B)*

> *as well as s. 48. In all of these provisions, late payment charges are imposed on the Land Administrator for any delay in paying compensation*. The concept of Late Payment Charges came about following the amendment to the LAA pursuant to the Land Acquisition (Amendment) Act 1997 (Act A999) which came into force on 01.03.1998. *By that amendment the original interest based payment under the LAA, was replaced by Late Payment Charges.*
>
> ...
>
> [28] We do not find the above legal position on payment of interest in *Renas* to be any longer the accurate position. *When The LAA Moves Away From Paying "Interest" To A Regime Of "Late Payment Charges" the application of interest in a civil procedure proceedings can no longer hold. Allowing payment of interest under the current LAA would militate against the Regime of Late Payment Charges and run inconsistent with the various provisions in the LAA ...*
>
> (emphasis added)

[30] Thus, it is apparent that the true context and factual matrix in *Bungsar Hill* was entirely distinguishable and inapplicable in the context of the appeal before us. In the appeal before us, the ESA 1990 does not have any specific provisions governing or precluding the award of late payment charges/ interest. There was no 'duality of regimes' as the Federal Court had to deal with in *Bungsar Hill*. The maxim *expressio unius est exclusio alterius*, (express mention of one thing implies the exclusion of another thing not so mentioned) does not apply in the appeal before us as there had not been any express mention of the award of late payment charges/interest within the ESA 1990 to then 'exclude' the State Government's award for late payment charges/interest.

[31] It was justifiable for the Federal Court in *Bungsar Hill* to preclude the award for judgment interest as the landowner's rights to be appropriately compensated for late payment remains intact and protected. The specific award for late payment charges under the Land Acquisition Act would already cater to the unjust enrichment of the State Authority at the expense of the landowner being deprived of its monies for the duration of the delay. The same cannot at all be said in the appeal before us. If we were to follow the learned judge's decision, that would effectively mean that the specific mention of 'compensation' within any Act would automatically 'preclude' the award for late payment charges for the delayed remittance of the same compensation. We verily doubt that was ever the intention of Parliament as that would lead to the undesirable position that authorities who are liable to pay compensation can drag their heels with impunity and delay remitting the payment for as long as they desire without any repercussions in complete disregard of the landowner's continued deprivation of the use of his monies.

[32] On the contrary, we are inclined to agree with the appellant's more holistic, pragmatic, and purposive interpretation of the ESA 1990 in terms of awarding late payment charges/interest so as to award "full compensation" under ss. 11(1) and 16(1) of the ESA 1990. The two provisions read as follows:

> (1) Subject to as herein after provided, whenever it is necessary so to do for the purpose of installing any system of distribution of electricity under this Act, a licensee may lay, place or carry on, under or over any land, other than State land, such posts and other equipment as may be necessary or proper for the purposes of the licensed installation, as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, **paying Full Compensation in accordance with section 16** to all persons interested for any **disturbance, damage or disability** that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment ...
>
> (1) The amount of compensation, if any, payable under section 11 or 13 shall be assessed by the District Land Administrator after such enquiry as he shall deem sufficient. The assessment shall be substantially in the form set out in the Third Schedule
>
> (emphasis added)

[33] Through the passage of time, our courts have steadily favoured a purposive approach to interpreting a statute instead of a strict literal interpretation (especially if the literal interpretation of a provision would lead to an absurd or undesirable conclusion). Lord Denning MR first championed the purposive approach to statutory interpretation and famously reminded that the courts ought not to be so restrained to the literal words of a statute, and even modify the words of a provision, if necessary so as to cater to circumstances or situations that Parliament might not have had in mind at the time of passing the law. We refer to the famous words of Lord Denning MR in the case of *Northman v. Barnet Council* [1978] 1 WLR 221:

> In all cases *now in the interpretation of statutes*, we *adopt such a construction as will 'promote the general legislature purpose' underlying the provision. It Is No Longer Necessary For Judges To Wring Their Hands And Say: 'There Is Nothing We Can Do About It*.' Whenever the strict interpretation of a statute gives rise to an *absurd and unjust situation*, the judges can and should *use their good sense to remedy it – by reading words in, if necessary – so as to do what Parliament would have don*e, had they had the situation in mind.
>
> (emphasis added)

[34] Closer to home, the Federal Court in *United Hokkien Cemetries, Penang v. The Board, Majlis Perbandaran Pulau Pinang* [1979] CLJU 122; [1979] 1 LNS 122; [1979] 2 MLJ 121 also shared the same sentiment in favouring a purposive approach over a strict literal interpretation of a statute:

> Then, in my view, it is a matter for the **purposive approach to replace the literal**. As was said by Lord Diplock in *Kammins Ballrooms Co Ltd v. Zenith Investments (Torquay) Ltd* [1971] AC 850 at p 899, the **literal method of construction is now completely out of date and has been replaced by a 'purposive approach**'. It ought to be noted that this purposive approach is not a modem fashion. Since the 17th century, it has been the task of the judiciary to interpret an Act 'according to the intent of them that made it': Coke 4 Inst 330.
>
> (emphasis added)

[35] A cursory appreciation of the provisions governing the rights (of both a licensee (being TNB) and a landowner) and the procedure of obtaining a wayleave would sufficiently reveal that the legislative purpose of these provisions must necessarily be to govern and justly protect (and balance) the authority of a licensee to enter into lands (for purposes of supplying electricity) and the rights of landowners to be fully informed and compensated for the loss of their land that had to be acquired or surrendered for the purposes of TNB's installation of infrastructures to supply electricity to the public at large. If that had not been the legislative intent, then Parliament would have not included protection mechanisms for proper notification and rights to object to the landowners. Thus, it is apparent to us that just and appropriate compensation is at the forefront of the purpose of the provisions.

[36] Thus, it would certainly be contrary to the legislative intent if the provisions were interpreted in a manner in which would encourage delays with impunity and allowing the rights and entitlements of landowners be held at limbo and mercy of the licensee and the Land Administrator with zero repercussion.

[37] We are certain that no statute ever legislated within our nation would promote a statutory authority to delay justice with impunity at the expense of unjust losses incurred against innocent landowners. If that be the case, then TNB would stand to unjustly benefit to earn by holding onto monies that should have been timeously paid to landowners, courtesy of the delays of the Land Administrator. In the meantime, the Land Administrator would not suffer a single cent for the entire duration of delay. The only party who suffers losses would be the landowner (who effectively is kept out of earning from the monies that should be paid to him). Such an interpretation would truly be absurd and unjust.

[38] The above considered, we find that the learned judge's decision unfortunately runs afoul to the proper purposive interpretation of the provisions. Thus, the learned judge's error here would have already encroached the realm of 'illegality' (in misinterpreting the law) and

A 'irrationality' (in condoning an absurd interpretation of the law) which would warrant our intervention to overturn the learned judge's decision to allow the respondent's application for judicial review.

[39] Now, even if we were wrong in our preference for the purposive interpretation above, we also find that a strict and literal interpretation of
B s. 11(1) of the ESA 1990 would still not lend credence to the respondent's case. The learned judge unfortunately had not factored in an important tenet in the interpretation of statute (be it literal or purposive). That tenet being that the exercise of interpretation of statute must necessarily be done in reference to and in consideration of fundamental constitutional rights
C entrenched in the Federal Constitution. Suffice that we refer to the salutary words of David Wong JCA (as His Lordship then was) in the Court of Appeal case of *Datuk Seri Khalid Abu Bakar & Ors v. N Indra P Nallathamby & Another Appeal* [2014] 9 CLJ 15; [2015] 1 MLJ 353:

> [68] *In interpreting any statute, it is our considered view that the Courts must always*
D *be vigilant to any interpretation which may dilute the importance of any constitutional rights of citizens of this country*. The significance of any breach of any basic rights provided for in the Federal Constitution cannot be viewed in the same manner as a breach of say 'traffic law' for the simple reason that there is no greater breach than that of a breach of a constitutional right. Further in this country we practise constitutional
E supremacy as opposed to parliamentary supremacy. *Hence it is incumbent on the courts when interpreting any statutes, resort must be made to the Federal Constitution when appropriate to do so.*
>
> (emphasis added)

[40] Thus, since the provisions governing the wayleave procedures are
F largely concerned with the constitutional rights of land ownership (property), it is only appropriate that the provisions be interpreted *in tandem* with art. 13 of the Federal Constitution. Thus, the literal term of "full compensation" under s. 11(1) of the ESA 1990 must necessarily be read together with the term "adequate compensation" under art. 13(2) of the
G Federal Constitution. Therefore, the learned judge was already in error when he had 'limited' the interpretation of the provisions without due consideration of the fundamental rights entrenched within the Federal Constitution.

[41] The term 'adequate compensation' in art. 13(2) of the Federal
H Constitution had been discussed by the Federal Court in the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561:

> [27] The right to acquire, hold and enjoy property is a fundamental right guaranteed by the Federal Constitution. However, it is not an absolute
I right since ownership of property is subject to what is provided for in the Federal Constitution. One's property can be acquired by the state.

> However, that acquisition would have to be carried out in accordance with law. *The Federal Constitution also safeguards the land owner's right to receive adequate compensation as a result of his land being acquired*. Article 13(2) specifically makes provisions for payment of adequate compensation for the property acquired.
>
> ...
>
> [197] *Article 13(2) is a constitutional safeguard to land owners to receive 'adequate compensation' upon acquisition*. Even as the Act authorises the state to acquire land from land owners, *the law provides that the person deprived of his property must be adequately compensated*.
>
> [198] *But what is adequate compensation for a person who has been deprived of his or her property?* The term 'adequate compensation' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak lwn. Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282, the Supreme Court held that *'the basic principle governing compensation is that the sum awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired'* (see *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath).
>
> [199] *The above principle is known as the principle of equivalence. By this principle, the affected land owners and occupants are entitled to be compensated FAIRLY for their loss*. But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.
>
> (emphasis added)

[42] It was significantly apparent within the learned judge's grounds of judgment that the learned judge's refusal to award late payment charges was somewhat caused by either the learned judge's hands being 'tied up' by the supposed limited scope of the provision or the fact that the delay was caused by the Land Administrator (and not TNB). Thus, the learned judge had in fact appreciated the 'injustice' in depriving the appellant of its rightful entitlement to late payment charges/interest but had not awarded so due to a misconstrued 'statutory limitation' or the issue of a proper defendant (being the Land Administrator).

[43] Thus, it was apparent that the learned judge himself had been aware of the injustice against the appellant being deprived of 'adequate compensation' accounting the passage of time in which the appellant remained unfairly deprived of the use of its monies. Despite this initial appreciation, the learned judge still fell into error in failing to interpret the ESA 1990 *in tandem* with the constitutional safeguards deeply entrenched within the Federal Constitution. It bears repetition that an interpretation which promotes delays *ad infinitum* with impunity would obviously lead to vastly unfair consequences. Thus, to deprive the appellant of its rightful late payment charges would certainly transgress upon the appellant's

constitutional rights safeguarded under art. 13(2) of the Federal Constitution. On this score, again the learned judge's decision had fallen into illegality and irrationality.

[44] In view of all of the above deliberation under this heading, we accordingly answer issue 1 in the negative. The learned judge unfortunately had fallen into error in his misapprehension, misinterpretation, and incorrect application of ss. 11 and 16(2) of the ESA 1990.

Issue 2: Whether The Learned Judge Was Correct In His Appreciation Between The Issue Of Attribution Of Delay And The Appellant's Ultimate Entitlement For Late Payment Charges Or Interest

[45] It is certainly unfortunate that the learned judge had misguidedly considered an irrelevant factor in determining the appellant's ultimate right and entitlement for late payment interest/charges (and necessary damages to nullify the effect of unjust enrichment of TNB at the expense of the appellant being unjustly deprived of its monies).

[46] The assignment of 'blame' for the delay is only relevant against the appellant if the period of delay was caused by the appellant's own hands. If any portion of the delay was caused by the appellant itself, then estoppel would set in to bar the appellant from crying foul against its own self-inflicted loss or damages. This would be squarely in line with the adage that the court shall not assist a party who was the author of his own misfortune.

[47] The appellant had acted in manners that directly caused protracted litigation up to the Federal Court level in the appellant's initial bid to object against the entirety of TNB's belated compliance with the wayleave procedures. Thus, if there was any attribution of blame for delay that was relevant to the appeal before us, it should only be the delay directly caused by the appellant's initial litigation up to the Federal Court spanning from the year 2008 until 2015 (when the Federal Court finally refused the appellant's application for leave to appeal to the Federal Court). The delay during this span of time cannot be claimed by the appellant as the progenitor of the delay itself.

[48] However, the same cannot at all be said of the delay caused by the Land Administrator. It was ultimately irrelevant to the appellant's rights to just compensation for delays if the delay was either caused by TNB itself or the Land Administrator. It remains constant and immovable that the delay by the Land Administrator would directly cause:

(i) unjust enrichment to the unjust benefit of TNB for being able to withhold and earn on monies that belongs to the appellant for the duration of the delay not caused by the appellant; and

(ii) unjust losses to the detriment of the appellant from being deprived of the use of the monies that belongs to the appellant for the duration of the delay not caused by the appellant.

[49] Would the position above change if instead the delay was directly caused by TNB itself? We believe that it does not at all change the ultimate consequence of TNB's unjust enrichment and loss against the appellant being deprived of the use of its monies. No matter how the stones may be turned, we cannot turn a blind eye to TNB's unjust enrichment at the expense of incurring losses against the appellant. TNB cannot eschew away from the irrefutable fact that it had not suffered any losses (and in fact had been unjustly enriched) due to the Land Administrator's delay. Crying foul over the Land Administrator's delay does not at all nullify the fact that TNB had been unjustly enriched at the expense of the appellant.

[50] Our sentiment must clearly be sent out that the Land Administrator must act with due expedition in conducting the enquiry lest it would inevitably lead to the unjust enrichment of TNB and losses against landowners alike the appellant. It is also pertinent to consider the fact that there was no evidence in court of TNB's own timeous expedition to push the Land Administrator to perform its statutory duty under the ESA 1990. It was the appellant's numerous written reminders and ultimately litigation against the Land Administrator which had finally 'incentivised' the Land Administrator to act. So, to say that TNB was entirely innocent of the delay is not entirely true as TNB merely coasted along with the Land Administrator's years of delay with no due urgency on TNB's part. TNB also equally had all the opportunity then to also push the Land Administrator to act but ultimately either failed or plainly refused to do so.

[51] In view of all of the above deliberations under this heading, we accordingly answer issue 2 in the negative. The learned judge unfortunately had fallen into error in his erroneous analysis between the issue of attribution of delay and the appellant's ultimate entitlement for late payment charges or interest. The learned judge (in wrongly considering the irrelevant factor of the Land Administrator's delay) had ultimately fallen into illegality and irrationality which would necessarily warrant our appellate intervention so as to quash the learned judge's decision to allow TNB's application for judicial review.

Our Decision

[52] All of the above deliberations considered, we find that there are merits in the present appeal. We hereby allow the appeal. The learned judge's decision to allow the respondent's/TNB's judicial review application is hereby set aside.

[53] We hereby reinstate the State Authority's decision to impose late payment charges/interest at the rate of 5% per annum upon the initial sum of RM2,105,335 but limited only to the specific period beginning from 12 October 2015 (being the date of the appellant's first reminder against the Land Administrator) until 18 December 2020 (being the date TNB fully paid the initial sum to the appellant).

[54] There shall be no order as to costs.